



Center for the Human Rights of Users and Survivors of Psychiatry
44 Palmer Pond Rd.
Chestertown, NY 12817 USA
www.chrusp.org
info@chrusp.org

WNUSP and CHRUSP Joint Submission to OHCHR Study on Violence Against Women With Disabilities

October 31, 2011

Prepared by Tina Minkowitz, Esq.

This submission is directed to the question, “Are practices such as 1) forced psychiatric intervention, 2) forced institutionalization, 3) solitary confinement and restraint in institutions, 4) forced drug and electroshock treatment, 5) forced abortion 6) forced sterilization and 7) harmful practices, prohibited by law?” It will focus primarily on #1-4 and related harms.

Part I Standards of International Law

Since the adoption of the Convention on the Rights of Persons with Disabilities by the UN General Assembly on December 13, 2006, international law has recognized the right of persons with psychosocial disabilities to live in freedom and security without compulsory medical interventions however well-intentioned they may be.¹ CRPD Article 14 guarantees the right to liberty and prohibits deprivation of liberty on grounds linked to an apparent or diagnosed psychosocial disability.² CRPD Article 12 guarantees the right to

¹ Report of Special Rapporteur on Torture July 28, 2008, A/63/175, [SRT 2008] paragraphs 44 and 49.

² OHCHR Thematic Study on Legal Measures for Ratification and Implementation of CRPD, A/HRC/10/48, paragraphs 48-49 [OHCHR

enjoy the legal capacity to make decisions in all aspects of life, including with respect to medical or mental health treatment,³ with access to support that respects the will and preferences of the person concerned.⁴ CRPD Article 17 guarantees the right to respect for physical and mental integrity, which obligates States Parties to incorporate into the law the abolition of medical treatment (including in mental health services) without full and informed consent of the patient.⁵ The CRPD standards, having been adopted by a resolution of the General Assembly, provide authoritative guidance for interpretation of customary international law and treaty obligations of UN Member States, insofar as they apply to the subject matter of the CRPD.⁶

Forced psychiatric interventions, including the administration without consent of electroshock or of mind-altering drugs such as neuroleptics, as well as forced institutionalization, solitary confinement and restraint in institutions, forced abortion and forced sterilization, may amount to torture and ill-treatment under the standards articulated by the Special Rapporteur on Torture.⁷ The submitting organizations believe that the named practices always amount at least to ill-treatment, and there are good reasons to believe that forced psychiatric interventions meet the UN definition of torture.⁸ In 2011, WNUSP submitted a paper on forced psychiatric interventions as a harmful cultural practice, to a joint CEDAW-CRC committee investigating harmful practices.⁹

Part II

Documentation of Violations

Legal Measures]. CRPD Concluding Observations on Report of Spain, CRPD/C/ESP/CO/1, [CRPD CO Spain] paragraph 36.

³ SRT 2008, paragraph 44.

⁴ CRPD CO Spain, paragraph 34.

⁵ CRPD Concluding Observations on Report of Tunisia, paragraphs 28-29.

⁶ SRT 2008, paragraph 44, citing International Disability Alliance Position Paper on CRPD and Other Instruments, and paragraph 76.

⁷ SRT 2008, paragraphs 38, 40, 41, 44, 47, 49, 50, 55, 56, 57, 59, 60, 61-65, 70-76.

⁸ Minkowitz, The UN CRPD and the Right to Be Free From Nonconsensual Psychiatric Interventions, *Syracuse J. Intl. L. & Commerce* Vol. 34 No. 2. Minkowitz, Forced Interventions and Forced Institutionalization From the Perspective of Persons with Disabilities, Annex III to OHCHR Report of Expert Seminar on Torture and Persons with Disabilities.

⁹ Annexed to this submission.

Despite the significant shift in international law brought about by the CRPD, States Parties have not moved to abolish by law these violent practices. Information reported by members of World Network of Users and Survivors of Psychiatry (WNUSP), European Network of (ex-) Users and Survivors of Psychiatry (ENUSP), and Pan African Network of People with Psychosocial Disabilities (PANUSP), supplemented by information on file with the author, document legislation from all regions of the world authorizing psychiatric interventions and institutionalization without the free and informed consent of the person concerned.

We do not know of any country that has prohibited forced psychiatric practices as a matter of law.

We can document legal permission, and no prohibition, of forced psychiatric practices including forced institutionalization, forced psychiatric interventions, restraint and solitary confinement in institutions, and forced drugging and electroshock, in the following countries: Argentina,¹⁰ Australia,¹¹ Bangladesh,¹² Brazil,¹³ Bulgaria,¹⁴

¹⁰ Public Health Law No. 26,657, The Right to Mental Health Protection, 2 December 2010. CRPD entered into force for Argentina on or about 2 October 2008.

¹¹ As a federal state, each of Australia's states has its own legislation, for example Victoria's Mental Health Act 1986. Victoria is in process of reviewing this legislation but has not indicated any intent to repeal provisions authorizing compulsory treatment and involuntary hospitalization. Australia is a State Party to CRPD and made a declaration claiming that substituted decision-making and compulsory treatment were not prohibited.

¹² Lunacy Act of 1912, information as of 2009.

¹³ Mental Health Act 2001. See <http://www.mhamerica.org/nationalnews.htm#Brazils%20New%20Mental%20Health%20Act>, information as of 2002.

¹⁴ Public Health Act, Sections 36 and 59. See Report of CPT on visit to Bulgaria, CPT/Inf (97) 1 (Part 1), information as of 1995.

Canada,¹⁵ China,¹⁶ Colombia,¹⁷ Croatia,¹⁸ Denmark,¹⁹ Germany,²⁰ Ghana,²¹ Hungary,²² India,²³ Ireland,²⁴ Italy,²⁵ Japan,²⁶ Kenya,²⁷ Malawi,²⁸ Mexico,²⁹ Netherlands,³⁰ Nigeria,³¹ Norway,³² Peru,³³ Poland,³⁴ South Africa,³⁵ Spain,³⁶ Sweden,³⁷ Tanzania,³⁸ Uganda,³⁹ United Kingdom,⁴⁰ United States,⁴¹ Zambia.⁴² The footnotes and Part IV of this submission give more specific information for some countries. This submission cannot claim to be comprehensive, so the examples are illustrative. Information is given where available on forced psychiatric practices in the penal system, in other types of

¹⁵ As a federal state, each of Canada's provinces has its own law. In British Columbia, it is the Mental Health Act (RSBC 1996) Chapter 288. B.C. has two other laws that protect autonomy to a greater extent than the Mental Health Act, known as the Representation Agreement Act (RSBC 1996) Chapter 405 and the Health Care Consent Act (RSBC 1996) Chapter 181, but both laws specifically exclude their application to compulsory mental health treatment or involuntary admissions. Canada is a State Party to CRPD and made a conditional reservation on legal capacity.

¹⁶ See Analysis of China's Draft Mental Health Law - An Interview, China Law and Policy Oct. 24, 2011.

¹⁷ Ley 1306 de 2009.

¹⁸ Law on Protection of Persons with Mental Disorders, 1997. Jusic et al., First Croatian Law on Protection of Persons with Mental Disorders, Coll. Antropol. 229 (2005).

¹⁹ Law number 331 of 24 May 1989 about detention and other types of compulsion/forced measures in psychiatry. Restraint is enforced by law but not solitary confinement. There is also a law on forensic psychiatry permitting forced measures.

²⁰ As a federal state, each of Germany's states has its own law authorizing psychiatric detention and forced interventions, for example in North Rhine Westphalia the Gesetz über Hilfen und Schutzmaßnahmen bei psychischen Krankheiten (PsychKG). An advance medical directive pursuant to § 1901a Civil Code may be effective to prevent psychiatric assessment, detention and forced interventions, and is being promoted under the name of PatVerfü, see <http://www.zwangspanychiatrie.de/non-german/english>. The German Basic Law prohibits forced abortion and forced sterilization. Germany is a State Party to CRPD, but issued a domestic memorandum accompanying ratification that claims deprivation of liberty can be based on disability if other factors such as "danger to self or other" are present, see http://www.die-bpe.de/press_release.htm, contrary to the intent of the CRPD as analyzed in OHCHR Legal Measures Study and SRT 2008.

²¹ Mental Health Decree of 1972. Mental Health Act 2009 is being considered by Parliament, and would retain involuntary measures.

institutions (like nursing homes and social care homes), and used on children, which are permitted by law or not prohibited. This submission has not checked for details on restraint and solitary confinement in the legislations noted, but we have given specific information where it was provided. In only once instance was it specifically reported that the law did not enforce solitary confinement. Information about forced sterilization and forced abortion is provided where it was reported to us.

²² Act CLIV of 1997 on Health; Act LXIV of 1997 on Health Article 199 (1). See CRPD Alternative Report Prepared by the Hungarian Disability Caucus. Decree Number 1/2000 (I. 7.) SzCsM (Ministry of Social and Family Affairs) allows measures restricting personal freedom including “restriction of movement, restricting leaving of the institution, isolation, binding, bodily restraint, but also use of other biological, chemical, psychological or physical methods.” The Report also notes that forced psychiatric intervention is permitted in penal institutions.

²³ Mental Health Act of 1987 and Bombay Beggary Prevention Act 1959. A draft law on the rights of persons with disabilities of 30 June 2011 would commit to phasing out compulsory care and nonconsensual treatment. However, a draft mental health act amendments bill of 6 December 2010 would retain authorization for compulsory admissions and nonconsensual treatment as well as restraint and solitary confinement.

²⁴ Mental Health Act of 2001.

²⁵ Law No. 180: Voluntary and Compulsory Health treatments, May, 1978.

²⁶ Law Related to Mental Health and Welfare of the Person with Mental Disorder, http://www.npo-jam.org/en/pdf/en_law_001_2010.pdf. Family guardianship provisions violate the right to legal capacity and include explicit obligation to “cause the person with mental disorder to receive treatment” Articles 20 to 22-2. “Voluntary” hospitalization (Articles 22-3 to 22-4) does not mean a person is willing to be hospitalized but that there is no clear refusal, so it is designated as voluntary. Forced hospitalization is authorized under section 3: Examination by Physician and Involuntary Hospitalization, Articles 23 to 32, and section 4: Hospitalization, etc., for Medical Care and Protection, Articles 33 to 34. Restraint and solitary confinement are authorized under Chapter 5: Medical Care and Protection (Articles 20 to 44), particularly Articles 19-4, 29-2-2, and 36. “Danger to others” is broadly interpreted as including to injure a person’s honor. A new preventive detention law for “mentally disordered offenders” diverts individuals charged with a crime and labeled as having a mental

Rwanda⁴³ has no legislation specifically permitting forced psychiatric interventions and institutionalization but has no laws prohibiting it either. Philippines reportedly has no such legislation and is considering a mental health bill drafted in 2008 that does not prohibit, but permits forced psychiatric interventions and institutionalization.⁴⁴

Of these countries, Argentina, Australia, Bangladesh, Brazil, Canada, China, Colombia, Croatia, Denmark, Germany, Hungary, India, Italy, Kenya, Malawi, Mexico, Nigeria, Peru, Philippines, Rwanda, South

disorder into psychiatric detention and forced treatment, and denies them the due process right to a fair trial proving guilt beyond a reasonable doubt before imposing a sentence of imprisonment. The preventive detention law allows forced electroshock if procedural standards are followed. Other than that, there is no law allowing or prohibiting particular forced treatments, and many penal inmates and also in-patients in mental hospitals are forced to be drugged and to receive ECT.

²⁷ Mental Health Act of 1989.

²⁸ Mental Health Act of 1960.

²⁹ As a federal state, Mexico's law varies at the state level. In the Federal District of Mexico, Ley General de Salud, D.O.F., 7 Feb. 1984, Últimas reformas 27 Abr. 2010, Cap. VII, Salud Mental, Article 75 refers to internment that is permitted according to scientific and legal criteria established by the Secretary of Health. A new mental health law was passed on 23 February 2011 that continues to authorize internment and forced interventions, rejecting a proposal made on 16 July 2010 that would have prohibited such practices and brought legislation into compliance with CRPD.

³⁰ Psychiatric Hospitals (Compulsory Admission) Act, 17 January 1994.

³¹ Lunacy Act of 1958.

³² Forced psychiatry is authorized by law under the Norwegian Mental Health Act 1999. See Joint Submission by We Shall Overcome, World Network of Users and Survivors of Psychiatry, and the International Disability Alliance for the examination of Norway in the Human Rights Committee, 103rd Session. The legislation on sterilization has a provision that gives a legal guardian the right to apply for sterilization of a person deemed to have "a serious mental disorder or intellectual disability (..)" when the person is deemed to not have the capability to make a decision about the intervention..... (the Sterilization Act dated 3 June 1977 No. 57). Also when it comes to abortion the legal guardian can ask for an abortion to be done; *"If the woman is suffering from severe mental illness or is mentally retarded to a considerable degree, the application may be submitted by the guardian. The woman's consent shall be obtained if it may be assumed that she is capable of understanding the significance of the operation"* (§ 4 in the

Africa, Spain, Sweden, Tanzania, Uganda, United Kingdom and Zambia are States Parties to the CRPD. Bulgaria, Ghana, Ireland, Japan, Netherlands, Norway, Poland, and the United States are Signatories to the CRPD.

Several of the countries have enacted such laws or begun drafting new ones since the entry into force of the CRPD,⁴⁵ flagrantly violating their obligations as States Parties or Signatories to that treaty. In many cases the violation results from lack of knowledge about the

Act dated 13 June 1975 no. 50 concerning Termination of Pregnancy - the Abortion Act; <http://www.ub.uio.no/ujur/ulovdata/lov-19750613-050-eng.pdf>). In other words; both abortion and sterilisation can be executed against persons with psychosocial or intellectual disabilities without the consent of the person concerned.

³³ Ley No. 29737 (Ley que modifica el artículo 11 de la ley 26842, ley general de salud, referido a la salud mental; y regula los procedimientos de internamiento de las personas con trastornos mentales). CRPD entered into force for Peru on 3 May 2008, and the law was enacted 5 July 2011.

³⁴ Open Letter to the Secretariat of the Committee for Prevention of Torture, IAAPA SekcjaPolska, 14 February 2011. The letter refers to one mechanism for psychiatric institutionalization, via legal incapacitation in the family court, but also says that neither the police nor the prosecutor have the power to intervene when a person is held involuntarily by psychiatrists. It also quotes a TV report of systematic abuses “presenting a hell on earth,” including injections as punishment, solitary confinement for months and restraining straps for a month, among other things.

³⁵ Mental Health Care Act of 2002. Involuntary treatment is allowed. Consent is required for electroshock but this is doubtful within the interpretation of “involuntary treatment” where no consent is required. Isolation cells still exist in all hospitals.

³⁶ Law 1/2000, of 7 January, on Civil Procedure, Section 763.

³⁷ Law on Psychiatric Forced Treatment (LPT) 1991:1128 and Law on Forensic Treatment (LRV) 1991:1129.

³⁸ Lunacy Act of 1958.

³⁹ 1964 Mental Treatment Act and other legislation. See Working Paper: A review of the Ugandan Legal Framework Relevant to Persons with Disabilities, prepared by OHCHR, August, 2008. A new mental health bill, drafted in June 2010, is under consideration, which would continue to authorize forced interventions and institutionalization.

⁴⁰ Mental Health Act 1983 as amended in 2007, <http://www.legislation.gov.uk/ukpga/2007/12/contents>.

⁴¹ The United States is a federal state with a law for each jurisdiction. In New York, Article 9 of the Mental Hygiene Law is the Mental

actual standards of the CRPD and lack of knowledge about how to create the kinds of support that would meet the CRPD requirement of respect for personal freedom and integrity. Lack of knowledge is exacerbated by the presence of vested interests promoting a medical model of psychosocial disability, including coercive treatments, that has proven harmful in the western countries where it originated.⁴⁶ It is hoped that the CRPD Committee, OHCHR and other treaty bodies will use their resources and mandates to advise and assist UN Member States to fulfill their human rights obligations, seeking

Health Act. It authorizes involuntary outpatient treatment under §9.60 and authorizes involuntary admissions and retention under a number of mechanisms. “Voluntary” patients can be converted to involuntary, but “informal” patients can leave at will. However, attorneys report that no one has been admitted under informal status for some time. Compulsory treatment of individuals on involuntary status, including forced drugging and forced electroshock, is authorized based on a “capacity to consent” standard under *Rivers v. Katz* (NY 2006). Criminal Procedure Law §§ 710 and 330 and Corrections Law §§ 508 and 402 authorize involuntary psychiatric institutionalization within the penal system. The United States Supreme Court has upheld the constitutionality of psychiatric detention and forced interventions, subject to minimal limitations and procedural requirements. Restraints and solitary confinement are permitted but some states have undertaken initiatives to drastically reduce the use of such measures. Children and youth have no right to object to forced treatment, and parents can lose custody of their children for not complying with suggested psychiatric treatment. See U.S. Disability Joint Stakeholder Report for Universal Periodic Review, 9th session 1-2 November 2010.

⁴² Zambia Mental Disorders Act of 1951. The Mental Health Service Bill of 2008 is set to be adopted in 2011, repealing the 1951 legislation. The new bill will continue to allow for involuntary admission and treatment.

⁴³ Rwanda is reportedly in process of drafting mental health legislation, which if it follows the models of other such legislation would permit these practices by law. Current practice of mental health treatment without seeking consent is documented in Advocacy Report for Persons with Psychosocial Disabilities in Rwanda – 2011, NOUSPR.

⁴⁴ WHO-AIMS Report on Mental Health System in the Philippines 2007; Draft Mental Health Act 2008.

⁴⁵ Argentina, Peru and Mexico’s federal district have enacted new laws authorizing forced psychiatric interventions and institutionalization since the entry into force of the CRPD for these countries. Australia, Ghana, Ireland, India, Malawi, Netherlands,

assistance in turn from WNUSP and its affiliates that have competence in the subject matter.⁴⁷

Countries that initiate reviews of their mental health legislation and/or enact legislation to implement the CRPD should be encouraged to abolish all provisions of law that allow forced psychiatric interventions and institutionalizations, and to ensure that people with psychosocial disabilities retain full legal capacity to make decisions, while having access to support that respects the will and preferences of the individual.⁴⁸

Part III

Detailed Information Reported by WNUSP Members

In this section, we highlight concerns expressed by users and survivors of psychiatry in African countries (including Ghana and Kenya), India, UK, Japan, Peru, and the Netherlands, which include:

- Confinement and chaining in psychiatric institutions, jails and communities
- Legacy of colonial laws and abuses including mass incarceration of poor and homeless populations
- Psychiatric commitment as punishment without due process
- Solitary confinement and restraints
- Legislation that legalizes human rights violations
- Personal testimony of body cavity searches

PANUSP (Pan African Network of People with Psychosocial

Norway, Philippines, Uganda, and possibly Rwanda, are States Parties or Signatories to CRPD that are considering draft mental health legislation that retains forced psychiatric interventions and institutionalization.

⁴⁶ Robert Whitaker, *Anatomy of an Epidemic* (2010). See also WNUSP Submission on Harmful Cultural Practices.

⁴⁷ CRPD Article 4.3 requires States Parties to closely consult with persons with disabilities through their representative organizations, in any legislation or policymaking on CRPD implementation. This obligation is relevant to UN agencies and bodies as well. It includes a right to participation, but also displays respect and welcomes the expertise of people with disabilities in defining and remedying violations of our human rights, and maintains the tradition established in this respect during the drafting and negotiation of the CRPD.

⁴⁸ See SRT 2008, paragraphs 44, 50 and 72 on the relationship between legal capacity and protection against acts such as forced psychiatric interventions amounting to torture and ill-treatment.

Disabilities)^{49 50}

All the existing legislation allows for forced psychiatric intervention, forced institutionalization, solitary confinement and restraint in institutions, forced drugging and electroshock where resources are available.

During PANUSP October 2011 most countries reported restraints, forced institutionalization and confinement used both in psychiatric institutions, jails and in the communities. These widespread human rights violations were vividly demonstrated by photojournalist Robin Hammond work whose website <http://www.condemned-africa.com/home/> was shared with delegates.

Legacy of Colonial Laws

Bhargavi Davar, India

For the last 200 years we have had several variations of the colonial laws of incarceration. The format of these laws are penal, custodial: Indian Lunatic Asylums Act (1858), followed by Indian Lunacy Act (1912) which did not change until 1987, when it became the Mental Health Act. The MHA retains the full flavour of the earlier laws, with 5 provisions of involuntary commitment. While there is no law prohibiting involuntary commitment, this law actually multiplies atrocities on people by favouring largely involuntary commitments. A single voluntary commitment procedure is provided for in this law. However, voluntary commitment does not mean voluntary discharge; and a voluntary boarder can become an involuntary patient if the Medical Board certifies so.

The MHA should be looked at within the larger field of incarceration laws, (also with long colonial histories). Here we can include the Beggary Prevention Act of 1959, and provisions within the Criminal Procedure Code; also some provisions of the Police Act, the Corporation Act (for local governance); and the Railways Act. These Acts permit the unregulated transfer of people from one institution to

⁴⁹ PANUSP Report on Status of Mental Health Legislation in Africa, 2011.

⁵⁰ CNN also reported this year on conditions at Mathare Hospital in Kenya, with the involvement of WNUSP member and Committee on the Rights of Persons with Disabilities member Edah Maina, see edition.cnn.com/2011/WORLD/africa/02/25/kenya.forgotten.health/index.html and WNUSP letter to President of Kenya of 26 February 2011 protesting human rights violations.

another, resulting in a hugely violative process of trans-institutionalisation.

Studies in India and recent media exposes show the cruelty, torture and atrocities committed on the institutional populations, that we also advocate for the inquiry into custodial deaths and the issue of mass incarceration of the poor and the homeless.

Psychiatric Commitment as Punishment Without Due Process⁵¹

Arj Subanandan, United Kingdom

It's noteworthy that the amended act allows a person who is at risk of committing a serious crime to be incarcerated at the judgement of a psychiatrist without due process nor having actually committed the crime. The removal of a treatability test helps this so no treatment needs to exist. The simplification of the definition of mental disorder also assists in this respect. Essentially the protocol of loss of liberty - the punishment for the worst crimes - can be used on "people with dangerous personality disorders" who are at risk of but who have not actually committed a crime.

Further information to substantiate the claim is available from this paper published in the British Journal of Psychiatry in 2002.

<http://bjp.rcpsych.org/content/180/2/110.full>

Solitary Confinement and Restraint

Mari Yamamoto, Japan

Articles of the restriction and confinement etc. are not changed and in Japan recently number of confinement and restriction of the body on the bed are increasing.

And even "voluntary in-patients" are locked up, under confinement and restriction of the body on the beds.

On 2009 30th of June 8458 persons were under confinement and 8057 persons are binding by belt on the bed, including 1035 persons under confinement and also 1224 persons were binding by belt on the bed even though they are "voluntary in-patients".

⁵¹ The law on preventive detention of mentally disordered defenders in Japan has a similar effect, but is utilized after someone is charged with a crime, see footnote 26.

Further information of restriction (binding the body by belt on the bed) and confinement (to detain in a strip cell), the number of restriction and confinement from the government patients is researched every year on 30th June.

The number of restriction and confinement about 13,000 in 2004, then in 2008 they are about 16,500. 5.3% of in-patients of mental hospitals are under confinement or restriction. 1.3 persons per 10,000 population of Japan are under confinement or restriction on one day in mental hospitals.

Lobbying to Repeal New Law of Involuntary Treatment

Elena Chavez, Peru

The General Law of Health in Peru states that all medical treatment must be voluntary and with full knowledge of the patient reported. In reality this is not true.

In the month of July this year, Congress approved the amendment to the law stating the approval of involuntary treatment.

As WNUSP representative in Peru, I'm doing the lobbies necessary and advise the Commission on Disability of the Congress for drafting and presentation of a bill to repeal the law of involuntary treatment.

Draft Legislation Going Back in Time

Jolijn Santegoeds, Netherlands

The current Dutch law (wet BOPZ, Bijzondere Opnamen in Psychiatrische Ziekenhuizen) enables forced treatments, when mental illness and danger to self or others is diagnosed. This means basically forced institutionalization, and in second instance, forced treatments, such as medication, seclusion, restraints and so on. This can go on for a long time, officially max 1 week seclusion, but they just take a new form, to make a new registration, it can be endless.

Interpretation of BOPZ-criteria "danger" is very wide, such as financial regress, or harm to image.

The new draft law on Verplichte GGZ is even worse, putting these terms quite literally in the law; harm to image, harm to unborn children, harm to financial situation, psychological damage to third parties...

Also extending the allowed treatments, including things like: pedagogical (forced) interventions, medical (forced) interventions, outpatient (forced) interventions, and basically all interventions (not specified). They leave out any reference to force in the text itself, which is very misleading, like they talk about care, but the title says Obligated Care.

This draft law is like going back in time, anything will be possible. Any form of forced treatment will be justified by the law, without any restriction (even hitting a person can eventually be explained as an "intervention").. The door is set wide open to all kinds of abuses, and the chances of filing a successful complaint are about zero.

So the answer is short, if the new draft law on forced treatments isn't stopped, ALL treatments will be justified by law, nothing will remain prohibited... they call it "based on individual needs". These new drafts are all related, "enabling a seamless connection between all forced care-recipes based on an individual approach", they exclude not any form of treatment, because "every person is different, and whatever might be needed should be possible (with force)".

I'm trying to push the Dutch government into the CRPD-direction, and even made a "draft law" myself, which is the Open Mind-support meeting, now in a pilot project in Eindhoven (Eindhoven Model).

Personal Testimony on Forced Body Cavity Searches

Jolijn Santegoeds, Netherlands

As a woman, I should add that I had forced body cavity searches in 1994, under BOPZ-law, at child psychiatry (5 nurses overpowering me, and entering my intimate parts with a glove, before leaving me in seclusion. I was 16, and a very "nasty patient" (suicide attempts and severe self harm). I was also strapped on the bed naked, with supervision of a male (who said to be embarrassed to be there too).. I can testify.

I never succeeded in making a courts case, although I tried about everything, phoned and emailed many lawyers, and even said it in the media (no responses from lawyers or whatsoever).. I almost got apologies from the director of that institution, who is STILL the director of that institution... it's a very long story. I can testify. I have always objected and resisted to comply. I would really like to succeed in addressing that this is officially wrong.

When forced body cavity searches were performed, this was

“preferably done by a woman”.. (in the beginning, it used to be the general practitioner as a medical examination – it was a man searching for dangerous materials like razor blades- but this doctor didn’t want to come every day, because he didn’t like the struggles and said he should save lives – he’d rather be called for real emergencies, like cardiac arrests). Anyway, it sometimes was a male nurse, and often a female nurse.

In my opinion, it was even worse that it was done by a female, because it felt like rape, and women should know better.. Most rapes are done by men, and women are supposed to be against this. Women should know what respect and integrity means. I thought those women who did it were hypocrites, and it made me hate my own femininity even more. It is still hard. It made me feel more lost and alone, and even now I feel so lost because I was in a way raped by these women. There are no self-help-groups for such a thing. Most of the self-help-rape/sexuality-groups consist of women, so where should I go... If it was only done by men, I could have felt safer with women groups to heal. (But of course I advocate against all forms of body cavity searches, either by men or women it is wrong, and I’m against all forms of forced treatments). But that thing being done by females is the worst.

That is my opinion, based on experience. There are not many people who had this, it was extreme, but it happens.

In prison, body cavity search means: bending over and through your knees 3 times when being watched. At Schiphol airport they detain people suspected of smuggling and wait until they poo, because physical examination is a violation of privacy. Sometimes they have body scan equipment. But not in psychiatry. In my case they used force, a massive struggle, and performed this examination by hand, making it quite similar to group rape.. those nurses were supposed to care for me. I was depending on them, and there was no way I could trust them. It was part of my seclusion programme, and it was the worse experience I had, I still struggle with my femininity as a result of this. I used to consider myself as asexual (a word invented by me). I didn’t want to belong to women. I am slowly trying to recover, but it is still very hard. I never had sexual relations because of this, but I’m trying to find peace with my gender.

Earlier this year, 17 years after the experiences started, I bought my first high heels, some make up and some skirts. My lifetime has been doubled since then, and I don’t want to give the biggest part of my life to the traumas. I want to win, it’s MY life. I can’t let this destroy everything, but it’s a very hard struggle. I am still trying to recover

from this horror.

The law doesn't prohibit this (although it's also not specifically legalized under BOPZ law, and by addressing this issue, they have now put it in the draft law, as an allowed option to use forced body cavity search, so my activism has almost had the opposite effect....very very very sad).

I can't fight this in court, because they claim "danger was evident, so force was legal" and the legal terms to complain have expired (already 3x, the term is 5 years).

Part V

Conclusions and Recommendations

As a form of violence against women (and men), girls (and boys) with disabilities, psychiatric institutionalization and forced interventions, including forced drugging and electroshock, solitary confinement and restraint, forced body cavity searches, etc., are devastating and have a terrible cost to humanity in lives lost, psychic and physical harm, destruction of family relationships and curtailment of opportunities for education, work and recognition of one's achievements and potential.⁵² Nevertheless, states have not enacted laws prohibiting these acts of violence, but instead have enacted laws authorizing them, giving rise to state responsibility for acts amounting to torture and ill-treatment. Under the CRPD and other international law obligations (including Convention Against Torture), states are obligated to abolish the laws that permit forced psychiatric interventions and institutionalization, and to enact laws that prohibit these practices. In addition, reparations and remedies for the harms that have already been committed must be provided as set out in the Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations on Human Rights and Serious Violations of International Humanitarian law of 2006.⁵³ It is only through a process of reparations that states and civil society can come to terms with the gravity and consequences of these practices and related abuse and discrimination, and put them to rest. Abolition of the offending laws is a first and necessary step in reparations, as one aspect of the guarantee of non-repetition.

⁵² See WNUSP Submission on harmful cultural practices.

⁵³ A/RES/60/147.

The World Network of Users and Survivors of Psychiatry is a democratic organization of users and survivors of psychiatry that represents this constituency at the global level. In our Statutes, "users and survivors of psychiatry" are self-defined as people who have experienced madness and/or mental health problems, or who have used or survived mental health services.

WNUSP had its beginnings in 1991 and became a full-fledged organization with a democratic global structure on adopting its statutes in 2001. Currently we have members in over 50 countries, spanning every region of the world.

WNUSP is a member of the International Disability Alliance (IDA), and is represented on the Panel of Experts of the UN Special Rapporteur on Disability.

WNUSP was involved in the work on the Convention on the Rights of Persons with Disabilities (CRPD) since the inter-regional expert meeting convened by the Mexican government before the 1st session of the Ad Hoc Committee (the UN forum in which the CRPD was negotiated), and has been active and successful in achieving our aims for the Convention, especially with regard to legal capacity, liberty, integrity and free and informed consent, as well as principles of autonomy, human diversity and equality reflected not only in article 3 but throughout the Convention. WNUSP brought over 20 users and survivors of psychiatry to the UN, from every region of the world, in addition to representatives of other user/survivor organizations that worked closely with us, such as Mind Freedom International and People Who.

WNUSP was among the organizations that created the International Disability Caucus, and served on its steering committee; it is also currently on the steering committee of the IDA CRPD Forum. WNUSP was also one of the organizations represented in the 2004 working group that produced the first official draft text of the CRPD, and was represented as one of two civil society speakers at the adoption of the CRPD by the General Assembly.

Since the adoption of the CRPD, WNUSP has produced an Implementation Manual from a user/survivor perspective (available on our website), and continues to work with the rest of the international disability community, especially through the Legal Capacity Task Force, a working group of the IDA CRPD Forum.

WNUSP has Special Consultative Status with the Economic and Social Council of the United Nations (ECOSOC).

Please see our website www.wnusp.net for more information.

The Center for the Human Rights of Users and Survivors of Psychiatry (CHRUSP) provides strategic leadership in human rights advocacy, implementation and monitoring relevant to people experiencing madness, mental health problems or trauma.

In particular, CHRUSP works for full legal capacity for all, an end to forced drugging, forced electroshock and psychiatric incarceration, and for support that respects individual integrity and free will.